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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,002	02/12/2002	Klaus Wildenhain	3633-511	2442

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,002

Applicant(s)

WILDENHAIN ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-30, 32 and 35 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 7, 12, 14-19 and 31 is/are rejected.
- 7) ☒ Claim(s) 3, 6, 8-11, 13, 33 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,4,5,7,15-19 and 31 stands rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #6,442,911 to ELMER et al. The applicant is reminded that the claims are directed to the fixing member alone and does not positively cite the glazing and additional pane. Hence, this rejection is directed to the fixing member alone. Regarding claims 1,17 and 31, ELMER et al. discloses a fixing member (12) including a support (17) and at least one retaining/safety element (4,5,31,35); wherein the fixing member (12) is configured to permit movement from a first position to a second different position. In regards to claim 2, the support (17) fixes by forced engagement. In reference to claim 4, because of elements (60,61) the retaining member (4,5,31,35) does not directly contact the glass (2). In reference to claim 5, the additional element (3) has the bore (41) that receives a support (17) for the retaining element (4,5,31,35). Regarding claim 7, the support 917) intersects the additional element (3) and the retaining element (4,5,31,35) is fixed to the support (17). In reference to claim 15, the glazing (2) is a large scale glazing, see figure 1A. Regarding claim 16, there is an insulation gap (G) formed between the glazing (2) and the additional element (3), see the marked attachment. In reference to claims 18 and 19, the safety element (31,35) is coupled by a fastener (18) received in aligned bore (16,38) formed in the support (17) and safety members (35).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 12 and 14 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,442,911 to ELMER et al. in view of EP 0528781 ELMER et al. discloses the basic claimed fixing except for explicitly detailing that his glazing is a prestressed laminate. EP0528781 teaches that it is known in the art to form a glass facade (2) out of a prestressed laminate. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of ELMER et al. with the prestressed double glazing of EP 0528781 in order to improve the protective fire-resistance effect of the assembly.

Allowable Subject Matter

Claims 3,6,8-11,13,33 and 34 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 20-30,32 and 35 remain as being allowed.

Response to Arguments

Applicant's arguments filed 8/9/04 have been fully considered but they are not persuasive. Regarding the applicant's argument that US Patent #6,442,911 to ELMER et al. is cannot be used as prior art due to the fact that it issued on September 3, 2002 from a continuation of a PCT filed January 3, 2000 that relied on a German priority application filed April 6, 1999 because the German application did not publish until

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November 16, 2000 and the PCT application did not publish until October 12, 2000; and does not meet the parent's priority date of August 4, 2000, in order for the applicant to obtain the priority of his German application filed 8/12/99 which allows him to claim the PCT priority date of 8/4/2000, he must "perfect" his German patent by providing an English translation. Since the applicant has not perfected his German priority, ELMER et al. remains as prior art. Once the applicant has perfected his German priority, the ELMER et al. patent will no longer be priority. However, ELMER et al. is a prior art reference and remains as applied.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YMH
12/14/04
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A handwritten signature in black ink, appearing to be 'C. Friedman', with a long horizontal line extending to the right.

Carl D. Friedman
Supervisory Patent Examiner
Group 3600